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Transgender prison housing bill raises alarms

By Erin McGroarty

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Rylee Jenich is a formerly incarcerated transgender person who now works in Madison as a supervisor at a peer respite center.

RUTHIE HAUGE

Rylee Jenich spent 10 years incarcerated in various Wisconsin men’s prisons. For the last six of those years, Jenich — a trans-feminine person who uses they/them pronouns — publicly identified as transgender and underwent hormone treatment.

While that was a pivotal moment for Jenich's identity, coming out and beginning hormone therapy also exposed them to increased violence from fellow prisoners and prison staff, as well as what they call "state-sanctioned violence" that included months spent placed in solitary confinement.

The Wisconsin Department of Corrections' policy examines prison placement of transgender people on a case-by-case basis. A transgender person must ask to be placed with a population that aligns with their gender identity — a process that is often arduous and typically results in a transgender person remaining in a prison misaligned with their identity, Jenich said.

"My experience was one of a lot of violence," Jenich told the Cap Times. "Being trans in the Wisconsin Department of Corrections, it's not an easy thing."

Now, a group of Republican lawmakers is proposing a bill that critics like Jenich say would make the situation even worse. The legislation, introduced by Hilbert Republican Rep. Ty Boddin, would require that transgender people in prison be housed in a population matching their sex assigned at birth and not their gender identity — a move that legal experts say violates federal law and formerly incarcerated transgender people say is a dangerous codification of mistreatment and trauma.

The bill follows the same line of thinking as bathroom bills and sports bans, said Richard Saenz, a senior attorney with national LGBTQ+ law group Lambda Legal — referring to legislation that requires a transgender person to use a restroom matching their sex assigned at birth and not their gender identity, and bills to ban transgender women from competing on sports teams alongside cisgender women.

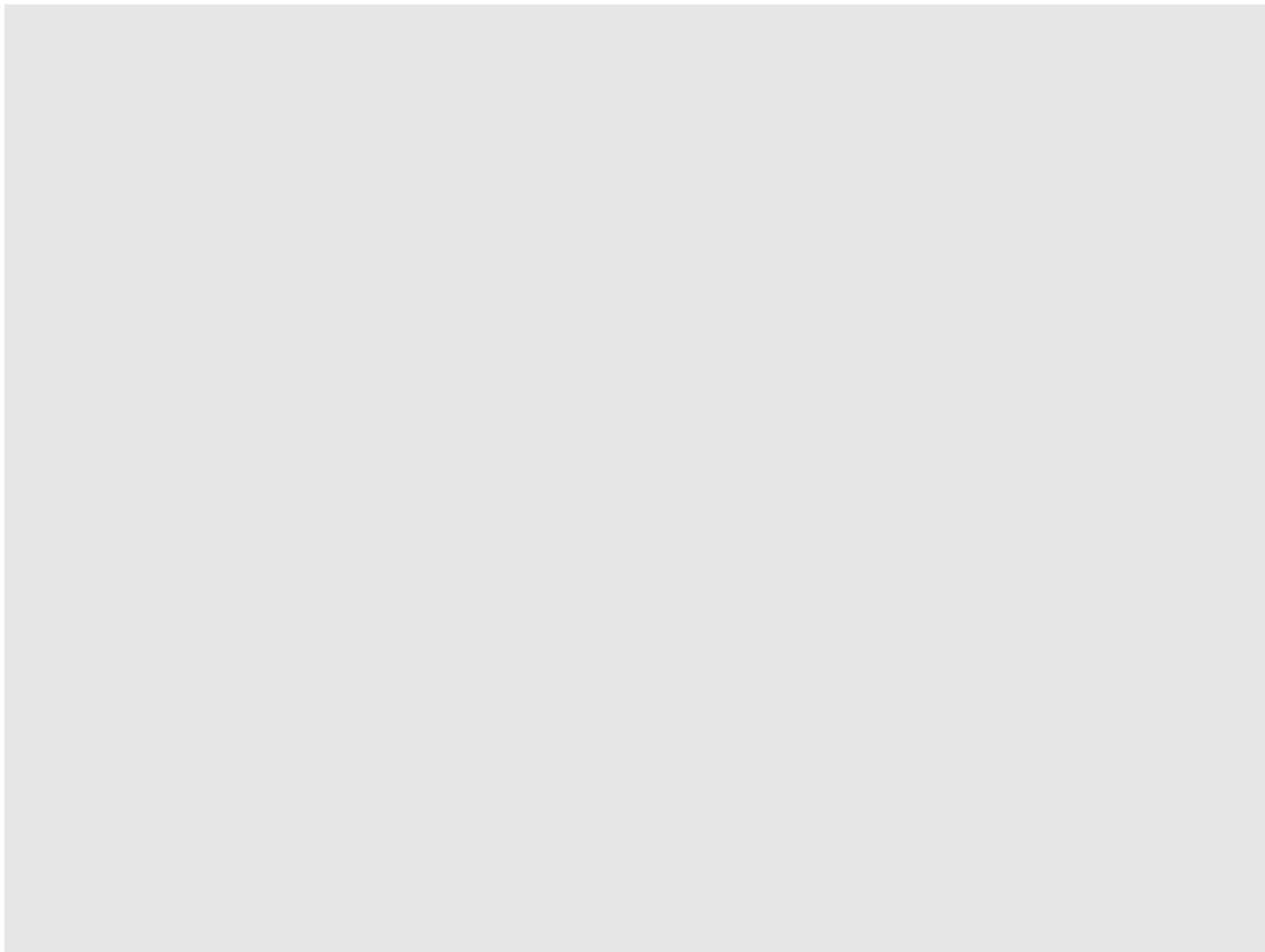
“The attacks that are happening against young people right now (are) under the guise of protecting children, or protecting (cisgender) girls from trans girls. These are things that we have been hearing for years about incarcerated transgender women, that they are inherently dangerous, or that their mere presence makes someone so uncomfortable or puts them at risk,” Saenz said. “These are just not true.”

Experts at Lambda Legal and the American Civil Liberties Union say the proposal will violate the federal Prison Rape Elimination Act as well as sections of the U.S. Constitution that protect against sex discrimination which, following a Supreme Court ruling in 2020, now includes gender identity.

In addition to potential violations of federal law, the proposal also flouts current state policy governing the placement of transgender people in state prisons in Wisconsin. While not always effective, according to formerly incarcerated transgender people, the policy still outlines a process through which to assign housing — a consideration that would be eliminated by Bodden’s bill.

The Assembly Committee on Corrections held a public hearing on the proposed bill in mid-October. Jenich was one of several transgender people who testified against it.

In introducing the bill to the committee, Bodden raised his concern that transgender women are being housed with cisgender women in prisons, a move he said raises security risks for the cisgender women. The Hilbert Republican told committee members he based the legislation off of concerns he said were raised by his constituents and a handful of corrections workers he spoke with.



The Forward statue holds a transgender pride flag during a rally for trans rights outside of the Wisconsin state Capitol on Oct. 4.

RUTHIE HAUGE

When asked by another committee member, Bodden acknowledged he had not talked to any transgender people in prison about how the bill would affect them.

“You spoke to the dignity that every inmate should have access to in terms of being incarcerated,” Rep. Darrin Madison, D-Milwaukee, said to Bodden. “When you’re thinking about this legislation and you’re talking about protecting all folks in this

scenario, I encourage you to have those conversations, because you're talking about a bill that specifically impacts a niche population in service of another. You should have a conversation with that niche population.”

The state Department of Corrections provided written testimony against the bill to the Assembly committee. The DOC's testimony said the proposal would conflict with state policy as well as federal guidelines laid out in the Prison Rape Elimination Act.

State policy on transgender prisoners

Wisconsin state prisons housed 242 self-identified transgender people as of late August, according to data provided to the Cap Times by the Department of Corrections.

The DOC has a specific policy regarding transgender people in prison that clarifies “the Division of Adult Institutions shall provide appropriate treatment, housing and accommodations for PIOC (persons in our care) who are transgender, meet (standard psychiatric) criteria for Gender Dysphoria or have a verified intersex condition.”

The proposed bill before the Assembly — as well as its Senate companion, which was heard by a committee last week — would conflict with multiple areas of the DOC's policy, most prominently by requiring a prisoner be housed in a population that does not correspond with the individual's gender identity.

Whether a transgender person in prison is housed with a population that corresponds with their gender identity is decided on a “case-by-case basis,” according to policy documentation provided by the DOC, taking into consideration the prisoner's “health and safety as well as potential programming, management and security concerns.”

The policy also states a transgender prisoner's "own views regarding safety shall be given careful consideration."

Placement of a prisoner in a facility or population that matches their gender identity must be requested in written form by the prisoner themselves. Additionally, the person must have identified as transgender for at least two years and have made "significant steps towards" transition, in most cases requiring at least one year of hormone treatment, the policy states.

The person's criminal background — including history of assault or sexual offenses — are taken into consideration, the policy adds. If there are instances of misconduct, the transgender person's housing placement is reconsidered. The Department of Corrections told the Cap Times in October that over the last year, there have been no such incidents that required reassessment.

These requests for housing accommodation are decided by the DOC's Transgender Housing Committee and must be reviewed every six months.

Because of the stipulations within the policy, Jenich said it remains incredibly rare that a transgender person is successfully transferred to a prison that aligns with their gender identity.

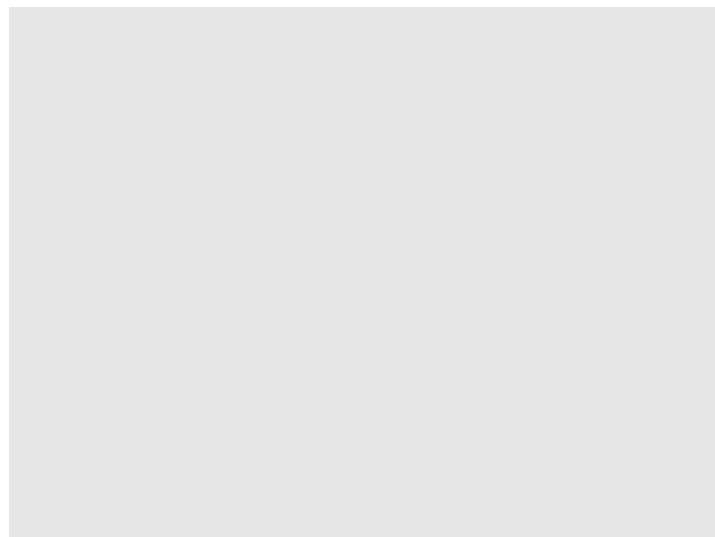
"The barriers in front of a trans person trying to transfer institutions that match their gender identity are extremely high," Jenich said. "They have policy after policy after policy written out. Basically, to stop that from happening."

The state Department of Corrections told the Cap Times in October that the committee has received 13 requests over the last year by transgender people in state prisons to be placed in housing that aligns with their gender identity.

As of October, all of those requests were still under consideration, according to a spokesperson for the DOC.

‘They didn’t know what to do with me’

Despite the 13-page policy, Jenich’s experience as a trans person in Wisconsin prisons was one of recurrent trauma. Incarceration is inherently violent, Jenich said. But that risk is amplified when you are a female-presenting person in an all-male prison.



Rylee Jenich is pictured on the State Street side of the Capitol Square in Madison.

RUTHIE HAUGE

When they reported instances of or threats of violence to prison staff, Jenich said they were more often than not placed in solitary confinement, with prison staff claiming the isolation was to protect Jenich from fellow prisoners.

“I’ve been in prison before transition and during transition. And I noticed a lot of differences in how I was treated,” Jenich said. “The time I spent in solitary confinement went up.”

Jenich described their placement in solitary confinement — or “seg” as many formerly incarcerated people call it — as “indiscriminate.”

“It’s like they didn’t know what to do with me. There were times where I spent three months in seg, five months in seg,” Jenich said. “And segregation... it’s torture. You’re completely isolated from everyone and everything.”

The United Nations considers any period longer than 15 days in solitary confinement torture.

During some of the longer stretches in solitary confinement, Jenich began experiencing psychotic episodes. Jenich had previously not struggled with mental health.

Sexual harassment, assault and violence at the hands of fellow prisoners as well as prison staff were pervasive during Jenich’s time in prison, they said.

Jenich was one of several prisoners sexually assaulted by a male prison guard while incarcerated at Prairie du Chien Correctional Institute more than a decade ago. The prison is one of six in Wisconsin that DOC claims does not house transgender prisoners for lack of single or double cell options required in state policy.

Jenich, as well as the other prisoners who were assaulted by the same guard, won a court settlement over the assault in 2010. The guard received no jail time for the crimes and paid a \$2,500 fine.

“I was sexually assaulted upwards of 10 times while I was in prison. I was sexually harassed daily,” Jenich told Assembly committee members during the October bill hearing. “Not once was that by a trans person.”

Jenich entered the prison system as a cisgender male and left after an eight-year sentence as a female-socialized trans person. Experiencing daily trans misogyny behind bars played a critical role in their path to providing community care after release, Jenich said.

Jenich has been out of prison for more than three years and works as a supervisor at a peer-run respite center for people experiencing crisis in the Madison area.

‘Case law has shown you can’t do this’

The bill mirrors a trend of anti-LGBTQ+ legislation proposed in state legislatures across the country, but it contradicts decisions attorneys like Lambda Legal’s Saenz are seeing play out in court over many of the same bills.

“These trends are counter to what we’re seeing through court orders, through court settlements, through legislation that is actually saying we have to comply with constitutional protections and with federal law in providing housing that is safe for transgender people,” Saenz said.

Washington state reached a settlement last month requiring transgender prisoners to be housed in populations that match their gender identity. States like California, Massachusetts and Connecticut have similar laws on the books. Additionally, the Federal Bureau of Prisons has a manual outlining guidance for safe housing of transgender people in prison.

Lawsuits in Georgia and New York state are challenging state policies — similar to what Republicans hope to pass in Wisconsin — that require prisoners be housed based on anatomy or sex assigned at birth.

“This is happening across the country,” Saenz said. “But it potentially violates constitutional protections under the Eighth Amendment and under the 14th Amendment.”

The Eighth Amendment governs what is considered cruel and unusual punishment and is often an amendment cited in lawsuits over treatment of people in prison. The 14th Amendment guarantees equal protection for all U.S. citizens under the law.

Saenz echoed concerns from legal experts at the ACLU that the proposed bill would violate the Prison Rape Elimination Act, which contains specific standards for making prison housing decisions.

“It could also potentially violate the Americans with Disabilities Act when you are making these determinations that are actually harmful to someone who has gender dysphoria, which is a recognized medical condition,” Saenz said.

A ruling from the U.S. Supreme Court this year upheld a 4th U.S. Circuit Court of Appeals decision that included a gender dysphoria diagnosis — commonly understood to mean an individual's gender identity runs contrary to the outward facing characteristics of their body — as a condition protected under the ADA.

That this bill is being proposed in Wisconsin should not be overlooked, given the state's history of limiting the rights of incarcerated transgender people, Saenz said.

The state of Wisconsin passed a bill in 2005 that sought to ban transgender people in prison from accessing hormone treatment and gender affirming surgery, a decision that was overruled in the legal case Fields v. Smith by the 7th U.S. Circuit Court of Appeals in 2011.

“We’re seeing history repeat itself,” Saenz said. “But the case law has shown you can’t do this.”

Erin McGroarty joined the Cap Times in May 2023 and covers politics and state government while also investigating disinformation. Originally from Alaska, Erin brings nearly four years of experience covering state politics from the farthest north capitol in the country.

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